IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8476 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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WEST COST PHARMACEUTICALS - Petitioner(s)

Versus

HEMLATABEN KAUSHIKKUMAR PATEL & 3 - Respondent(s)

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Appearance :

MR SANDIP C SHAH for Petitioner No(s).: 1.

MR RC PATHAK for Respondent No(s).: 1, 2,3.

RULE SERVED for Respondent No(s).: 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 2nd July, 1997 passed by the Labour Court, Ahmedabad in Application No. 19/1989 in Demand Reference

Case No. 24/1989, whereby the Labour Court has directed the petitioner to reinstate respondents no. 1 to 3 with full back wages.

2. The short facts of the case are that the respondents were doing the work of cleaning the factory premises of the petitioner. It is the case of the respondents that they were working as such since last three years. On demands being raised by the respondents, the petitioner without following any procedure under the Industrial Disputes Act, 1947 terminated their service. Being aggrieved by the said order, the respondents raised an industrial dispute which was ultimately referred to the Labour Court, for adjudication. The Labour Court after considering the materials produced before it passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. While admitting the matter on 17th September, 1999, this Court had stayed the operation of the impugned award qua back wages only. Since the respondents are reinstated in service, in the interest of justice, it would not be appropriate to disturb the said position at this stage.

Hence, this Court is not considering this petition so far as the grant of reinstatement is concerned.

4. Having gone through the award, it appears that the Labour Court has not given any cogent reasons as to on what basis it has awarded back wages to the respondents. An order of back wages cannot be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. In the present case, the Labour Court has awarded back wages while granting the benefit of doubt to the respondents.

4.1. Moreover in the principle laid down by the Apex Court in the case of **Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176** and in the case of **General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137 [2005 (5) S.C.C. p. 591]**, the respondent herein cannot be said to be entitled for back wages. Hence, the impugned award qua granting the back wages is required to be quashed and set aside.

5. In the result, the petition is partly allowed. The impugned award dated 2nd July, 1997 passed by the

Labour Court, Ahmedabad in Application No. 19/1989 in Demand Reference Case No. 24/1989, qua back wages is quashed and set aside and rest of the award is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs. Liberty to apply in case of difficulty.

[K.S. JHAVERI, J.]

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